

**MEMORANDUM OF UNDERSTANDING
BETWEEN
THE FEDERAL HIGHWAY ADMINISTRATION, NEW YORK DIVISION
AND
THE FEDERAL TRANSIT ADMINISTRATION, REGION II**

Background

In early 2003, a joint memorandum from Federal Highway Administrator Peters and Federal Transit Administrator Dorn put forth a proposal that the two administrations should develop plans for collaboration initiatives in transportation planning. As a result, Federal Highway Administration and Federal Transit Administration field and headquarters staff participated in several teleconferences and developed guidelines for a joint Federal Transit Administration and Federal Highway Administration national Memorandum of Understanding (MOU). This effort established a mechanism through which the Federal Transit Administration Region II Office (hereinafter refer to as FTA-II) and the Federal Highway Administration New York Division (hereinafter refer to as FHWA-NY) can further improve coordination in implementing program oversight activities and increase efficiency in delivering service to our customers and partners. The national MOA efforts have been used as a framework for the development of this Memorandum of Understanding (MOU) between the FTA-II and the FHWA-NY in the State of New York.

Purpose of this Understanding

The purpose of this Memorandum of Understanding (MOU) is to set forth the general terms and conditions for collaboration in transportation planning between the FHWA-NY and the FTA-II pursuant to an initiative undertaken by the Administrators of FTA and FHWA to improve coordination of transportation planning processes and to fulfill provisions of 23 U.S.C. 450 and 420 and 49 U.S.C. 613.

The FTA-II and FHWA-NY shall carry out the terms indicated in this MOU to streamline transportation planning decision making for Federal surface transportation projects and programs.

Goals

The goal of this MOU is to enhance the mutually beneficial relationship currently in place and to streamline and improve the following transportation planning processes:

- I. Communications and Conflict Resolution
- II. Meeting Attendance and Representations
- III. Statewide Transportation Improvement Program (STIP) Approvals
- IV. Statewide and Metropolitan Planning Findings
- V. Transportation Management Area (TMA) Planning Certification Reviews
- VI. Unified Planning Work Program (UPWP) Reviews and Approvals
- VII. Transportation Air Quality Conformity Determinations
- VIII. Project Coordination and Implementation

I. Communication and Conflict Resolution

Background

Historically, FTA-II and FHWA-NY have benefited from an excellent working relationship. This MOU intends to build upon this history by establishing a framework to further promote the existing collaboration. One of the challenges for effective communications is the simple fact that the FTA-II and FHWA-NY offices are located in cities 185 miles apart. Thus, communications between the two agencies have generally been via telephone or email or in some cases teleconferencing. This is not to say that face-to-face communications do not take place or are not encouraged. While these methods have worked well, this MOU is intended to enhance the procedures for streamlining communication and enhancing the process.

Communication

1. The FTA-II and FHWA-NY shall continue to communicate via telephone, teleconference, videoconference, e-mails and formal/informal meetings, as appropriate;
2. The FTA-II Director, Office of Planning and Program Development and FHWA-NY Chief, Planning and Program Development respectively, shall be the points of contact in each agency and shall conduct initial discussions regarding all planning issues based on the tools cited above;
3. The FTA-II Director, Office of Planning and Program Development and FHWA-NY Chief, Planning and Program Development shall communicate with others within their own agencies, as needed;
4. Joint correspondence needing to be shared in its preparation shall be shared in draft and forwarded through e-mails.
5. For correspondence beyond the actions mentioned above and/or that are prepared independently, said communication shall be shared with the respective sister agency, when such correspondence affects common issues and action items;
6. Each party shall be provided the opportunity to comment on all planning issues relative to their focus area within a reasonable, and mutually agreeable time frame;
7. Draft correspondence shall be reviewed within a mutually agreed upon time frame as suggested by the agency preparing the draft correspondence. If no time frame is identified, a two week time frame may be assumed for review and comments;
8. If no comments are received by the end of the two-week period and the reviewing agency has not expressed a need to extend the review period, then the drafting agency may conclude that there are no comments and will finalize the correspondence, as needed advise the sister agency accordingly; and
9. All comments and responses to comments should be documented. The FTA-II and FHWA-NY staff and managers shall notify each other as issues arise, providing a reasonable opportunity for discussion.

Conflict Resolution

1. It is intended that conflicts be resolved at the lowest appropriate staff level possible. However, if issues remain unresolved and efforts to resolve the issues are exhausted between the affected FTA-II and FHWA-NY staff and managers, the issues should be escalated to FTA-II and FHWA-NY Administrators or their deputies. The final resolution is expected to be reached within 30 days.

Quarterly Planning and Program Coordination Meetings

1. On a quarterly basis, representatives from FHWA-NY and FTA-II shall discuss current and pending issues and develop a tentative agenda for the coming quarter. It will be the objective of FHWA-NY and FTA-II to meet in person, at least semi annually;
2. FHWA-NY shall take the lead in scheduling the first semi-annual meetings, FTA-II will lead the second semi-annual meeting. Items to be discussed shall include but not be limited to such things as planning issues for each MPO, flex funds status, funding for projects that may have cross cutting issues such as intermodal terminals and transportation enhancements, and the identification of corridors for which multi-modal planning may be warranted.

II. MPO Meeting Attendance and Representation

Roles and Responsibilities

1. It will be the mutual objective of FTA-II and FHWA-NY to have representation at the New York Metropolitan Transportation Council (NYMTC) Program Finance and Administration Committee (PFAC), and Technical Coordinating Committee's (TCCs) meetings;
2. Prior to policy level meetings for the other MPOs in New York, both FTA-II and FHWA-NY will review the agendas. If either party determines that they will not be attending the meeting, they will contact the other party to discuss potential issues that should be addressed at the meeting and any representation that might be required;
3. Unless there is a transit issue or some other item being discussed at the TCC or the Policy Committee at one of the upstate MPOs that is of particular concern to FTA-II, FHWA-NY will represent both agencies at the meetings; and
4. At meetings handled solely by either FTA-II or FHWA-NY, a brief email or verbal summary will be provided to the party not in attendance.

III. Statewide Transportation Improvement Program (STIP) Approval

Background

23 U.S.C 135 and 49 U.S.C 613 established the Federal requirements for statewide transportation planning. The regulations, 23 CFR 450 and 49 CFR 613, require that at least every two years the State will submit their proposed STIP to the FHWA and FTA for joint approval prior to the obligation of Federal funds made available to the State under Titles 23 and 49. The joint review shall include, but not be limited to, the requirements of air quality conformity, public involvement, and fiscal constraint.

Roles and Responsibilities

1. NYSDOT shall submit their proposed STIP to the FHWA-NY and FTA-II for review and approval.
2. The FHWA-NY shall take the lead for ensuring that FTA-II has received a copy and shall initiate a 30-day review of the STIP.
3. Either agency may call a meeting during the review period, as necessary, to discuss and resolve any comments relevant to the joint approval of the State's STIP. This joint review effort shall be documented in the form of an internal and external approval document initiated by FHWA-NY.
4. Notification of the action taken for the STIP shall be prepared by FHWA-NY and signed by FTA-II and FHWA-NY.
5. The signed letter shall be forwarded to the State by FHWA-NY.

STIP Amendments Approval

1. The agency involved (FTA-II or FHWA-NY) in any major amendments to the approved STIP, depending on the type of project(s) involved in the amendment, shall have signature authority to approve the amendment.
2. All efforts should be made to approve STIP amendments within two weeks of receiving the amendment from the State.

IV. Statewide Planning Findings

Background

23 CFR 450.220 and 49 CFR 612 require a joint finding that the STIP or STIP amendments are based on planning process that meets, or substantially meets the requirement of title 23 U.S.C. and the Federal Transit Act. The joint Federal review will also consider the metropolitan transportation planning processes carried out by the State, MPO and transit operator(s). The review(s) shall cover, but shall not be limited to, the State/MPO self-certification, the locally approved long range transportation plan, the public involvement processes, the financial plan, the relationship of projects in the Transportation Improvement Program (TIP) to the long range transportation plan, and air quality conformity of transportation plans and the TIP.

Roles and Responsibilities

1. The NYSDOT performs a major update of the STIP on every odd calendar year. In January the FHWA-NY shall initiate the joint statewide planning finding process.
 - a. The FHWA-NY Chief, Planning and Program Development shall contact the FTA-II Director, Office of Planning and Program Development to establish the schedule and identify staff for completing the joint review. The joint Statewide Planning Finding review shall be conducted concurrently with the STIP approval.
 - b. Staff from FTA-II and FHWA-NY will confer on the areas to be reviewed.
 - c. The review team members will determine the review responsibilities.
 - d. In the event that the final Statewide Planning Finding Report is not completed in time for the STIP approval, FHWA-NY Chief, Planning and Program Development shall contact the FTA-II Director, Office of Planning and Program Development to confer on a STIP approval recommendation. If STIP approval is recommended, a statement addressing the substantial compliance of the Statewide

Planning requirements shall be included in the joint STIP approval letter, with notice that a final report to follow at a later date.

- e. In the event that a negative finding is warranted, NYSDOT will receive a formal, joint notice from FHWA-II and FHWA-NY.
2. A *Joint Planning Finding Review Report* shall be prepared by the FHWA-NY.
3. Once the *Joint Planning Finding Review Report* is signed by both agencies, FHWA-NY shall distribute the document to the appropriate parties.

V. Transportation Management Area (TMA) Certification Reviews

Background

The Transportation Efficiency Act for the 21st Century (TEA-21) requires a joint FHWA/FTA certification of transportation planning process for all Transportation Management Areas (TMA's) at least every three years. A joint certification review along with other documentation and site visits are the basis for determining that the transportation planning process in a TMA meets or substantially meets the requirement of 23 CFR 450 and 49 CFR Part 613. The FHWA-FTA TMA Certification Guidebook will be available to use as a guide for conducting a TMA certification review.

Roles and Responsibilities

Initial Certification Review

1. The team shall consist of staff from FHWA-NY, FTA-II, and if necessary, other technical expertise from other Division or Region offices, Headquarters, Resource Center, and/or U.S. Environmental Protection Agency (EPA).
2. The various responsibilities for conducting a follow-up on the Certification Review will be determined jointly by FHWA-NY and FTA-II. Some examples of the duties are:
 - a. Lead agency for writing the report, circulating it to the other Federal team members for comment and to the MPO, transit operators, DOT and other participants for factual verification.
 - b. Review logistics: establishing schedules, obtaining the material for the desk audit, completion of the desk audit, notifying participants, and preparing the agenda.
 - c. Shared responsibilities for leading the topics during the review and the closeout after the review.
 - d. Lead agency in coordinating any corrective actions, recommendations and noteworthy practices from the Federal team. The lead agency shall schedule a meeting or teleconference with the team members and any other appropriate entities to discuss the proposed corrective action, and to establish time frames for the MPO to correct the action.
 - e. Lead agency coordinating responses to any public comments and distribution of the final report to all participants in the review, including those participants from the public.
3. A determination regarding the presentation of the final certification finding will be made jointly between the FTA-II Director of Planning and Program Development and the FHWA Division Planning Chief, Planning and Program Director with concurrence from the FTA-II Regional Administrator and FHWA-NY Division Administrator.

Corrective Action Follow-up

1. FHWA-NY shall take the lead in setting up a follow-up meeting with the MPO and FTA-II prior to the expiration of the time limit given to address the corrective actions.
2. Based on the nature of the corrective action, FHWA-NY or FTA-II, as appropriate shall take the lead in asking questions and reviewing the status of the action to address the corrective action.
3. The lead USDOT agency conducting the review of the corrective active action shall write a joint letter within two weeks of the follow-up meeting documenting the results of the meeting and whether the corrective actions have been resolved by the MPO.

VI. Unified Planning Work Program (UPWP) Approval

Background

Federal requirements for metropolitan transportation planning are established in 23 U.S.C. Section 134 and 49 U.S.C. Section 613. The regulations for implementing these provisions are contained in 23 CFR 450 and 49 CFR 613 and include the requirement for the submission of UPWPs.

Roles and Responsibilities

TMA UPWPs

1. All TMA UPWPs shall be submitted to both FHWA-NY and FTA-II, concurrently.
2. FHWA-NY shall be the lead agency in coordinating the review.
3. Both agencies shall have 30-days to review the UPWP.
4. Either agency will initiate, as appropriate, a meeting to discuss and resolve any significant concerns relevant to the draft document.
5. It will be the objective of FHWA-NY in concurrence with FTA-II to prepare the joint review response letter for FHWA-NY and FTA-II signatures.
6. FHWA-NY shall distribute the final letter to the State and MPO.
7. Within two weeks of receipt of the final UPWP, FHWA-NY shall contact FTA-II to ensure that all comments have been addressed, and if necessary, initiate a meeting to discuss and resolve any comments not addressed in the final document.
8. FHWA-NY shall prepare a final UPWP approval letter and distribute it to the NYSDOT, the MPO and FTA-II. It is FHWA's understanding that FTA-II will grant project approval by executing the grant award.

Non-TMA UPWPs

1. All Non-TMA UPWPs shall be submitted concurrently to both FHWA-NY and FTA-II.
2. The FHWA-NY shall be the lead in reviewing the draft UPWP.
3. FHWA-NY shall contact FTA-II upon receipt of the draft UPWP to initiate a 30-day review.
4. FHWA-NY/FTA-II shall consult with each other on unusual or potentially controversial transit related projects.
5. FTA-II staff shall advise the FHWA-NY of any concerns within two weeks of receipt of the UPWP.
6. The FHWA-NY shall prepare the letter for FHWA-NY signature, unless there are significant FTA-II comments, in which case a joint letter will be prepared.

7. Upon receipt of the final UPWP, FHWA-NY shall contact FTA-II to ensure that all comments have been addressed. If appropriate, FTA-II shall initiate a meeting to discuss and resolve any comments not addressed in the final document.
8. FHWA-NY shall prepare a final approval letter addressing FHWA funding and project approval of the UPWP. As the TEAM system remains the books of account for FTA, execution of the grant award through TEAM will continue as FTA's notice of approval of the grant.
9. FHWA-NY shall distribute their signed letter to NYSDOT, the MPO, and FTA-II. FTA's action will be as cited above.

UPWP Amendment Approval

1. Any revision to UPWP will be coordinated as outlined above.

VII. Transportation Air Quality Conformity Determination

Background

Section 176(c) of the Clean Air Act establishes conformity requirements for the Long Range Transportation Plans, TIPs, and projects in areas designated as nonattainment or maintenance of the National Ambient Air Quality Standards. Section 176(d) of the Clean Air Act established priority requirements for programs supported by the Federal Government in order to provide for timely implementation of eligible portions of air quality plans. 23 U.S.C. Section 109 (j) establishes requirements to assure that transportation project development is consistent with approved plans for air quality.

The FHWA and FTA jointly, in consultation with EPA, make the determination of whether or not a transportation plan and TIP is in conformance with the Statewide Implementation Plan (SIP) for air quality. In New York, there are also two State agencies that are involved in reviewing the conformity analyses: NYSDOT and NYSDEC. In order to better coordinate the Federal, State and local reviews and discussions, interagency consultation procedures have been developed in accordance with the Clean Air Act. In New York, the *Interagency Consultation Group* (ICG) is composed of five permanent members: FHWA-NY, FTA-II, NYSDOT, NYSDEC, and EPA (Region II), with representation from an MPO when the subject matter directly pertains to said MPO (e.g., a TIP or Plan air quality analysis). The ICG reviews the air quality analyses on draft TIPs and draft Long Range Transportation Plans before finalization so as to identify problems before the MPO formally acts on the final TIP and/or Long Range Transportation Plan.

Roles and Responsibilities

1. FHWA-NY, FTA-II and EPA-II receive copies of Plans and TIPs, and air quality conformity analyses thereon, through NYSDOT's Environmental Analysis Bureau (EAB), which acts as the ICG lead agency for receipt of documents. The Federal agencies shall review the adequacy of the documents and prepare for ICG discussion of the material.
2. The members of the ICG meet as a group and discuss the conformity analyses and acceptability thereof. If there are questions raised by any member, EAB contacts the MPO for further information. Subsequent meetings may be needed for review

discussions. The ICG issues a finding by consensus, when it agrees that conformity to the SIP is demonstrated.

3. FHWA-NY and FTA-II operate as “One DOT” on the ICG. If either agency is not able to participate, the sister agency may speak for the other during ICG meetings. The absent agency will discuss the meeting agenda beforehand, with the attending agency. In matters that involve significant issues that the absent agency may want to comment on, the attending agency shall not formally agree to an ICG decision on that issue.
4. Once the ICG agrees that the TIP and/or Long Range Transportation Plan conforms to the SIP, FHWA-NY shall prepare a draft of the joint FHWA/FTA letter containing a formal determination that the TIP and/or Plan is in conformance with the SIP. The FTA-II will discuss the acceptability of the draft with FHWA-NY and appropriate modifications will be made thereto.
5. FHWA-NY Administrator and FTA-II Regional Administrator will jointly sign the final conformity determination after EPA has sent its formal concurrence on the matter.

VIII. Project Coordination and Implementation

Background

FTA-II and FHWA-NY have separate project development procedures. On many capital improvement projects, multi-modal themes will require the coordination of FTA-II and FHWA-NY. In other situations, single mode capacity improvements may require inter-agency coordination in the planning and project development process. The following steps illustrate how FTA-II and FHWA-NY will coordinate intermodal planning.

Roles and Responsibilities

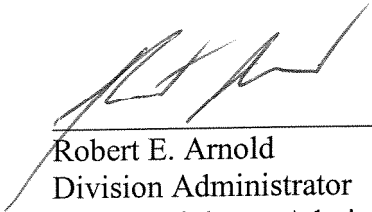
1. FHWA-NY Area Engineers are responsible for the NEPA process within their respective NYSDOT Region. The FHWA-NY Planners are responsible for corridor planning and major investment studies in their respective areas.
2. During a planning corridor study AA or MIS, the FTA-II and FHWA-NY planners may decide that FTA-II needs to meet with the Transportation Engineer and/or the Environmental Specialist from FHWA-NY responsible for the highway project in the multi-modal corridor.
3. If FTA-II and FHWA-NY have projects being planned and/or being constructed in the same corridor, coordination meetings with FTA-II Planner and/or Project Engineer and the FHWA-NY Area Engineer and/or Planner shall be used to share information and to discuss the need for coordination between the transit operator and NYSDOT.
4. If FTA-II has a major investment project being studied or constructed in a corridor of interest to FHWA-NY, reports prepared by the project sponsor or FTA-II's Project Management Oversight Contractor shall be made available to FHWA-NY at FTA's discretion. In addition, the FHWA-NY Area Engineer will be advised of FTA-II's Quarterly Project Management or other pertinent meetings held with the transit operators.
5. For major multi-modal projects utilizing funds from both FHWA-NY and FTA-II grants, it will be the objective to hold quarterly project management meetings that will include representation from both the transit operator and NYSDOT.

This agreement shall remain in effect indefinitely unless terminated by either party upon a thirty-day written notice to the other party. Either party to this MOU may request that it be amended, whereupon the parties will consult to consider such amendment. This MOU goes into effect with signature and date of all parties.



Letitia Thompson
Regional Administrator
Federal Transit Administration, Region II

4-14-05
Date



Robert E. Arnold
Division Administrator
Federal Highway Administration, New York Division

4-7-05
Date